

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION**

MICHAEL HOWARD REED,	)	
	)	
Petitioner,	)	
v.	)	Case No. 2:15-cv-00212-JMS-MJD
	)	
LEANN LARIVA, Warden,	)	
	)	
Respondent.	)	

**Entry Again Directing Further Proceedings**

A copy of the petitioner's filing of August 21, 2015 shall be included with the petitioner's copy of this Entry.

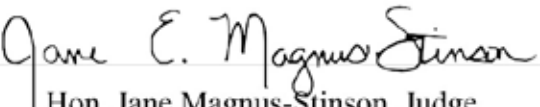
Michael Howard Reed challenges his convictions for possessing a firearm and ammunition while he was a fugitive from justice entered in the United States District Court for the District of North Dakota in No. 4:09-cr-00076-DLH-1.

Reed seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241. He was informed of the three requirements for invoking the savings clause of 28 U.S.C. § 2255(e) and given a period of time in which to supplement his petition by showing that these requirements can be met. He has filed a response, asserting that his claim of actual innocence supersedes the need to establish the requirements for invoking § 2255(e). His claim of actual innocence is a simple variation of his challenge to the sufficiency of the evidence which was presented and rejected in his direct appeal. His assertion regarding the savings clause, however, is incorrect. "A petitioner may not argue the merits of his claim until he has opened the portal to a § 2241 proceeding by demonstrating that the savings clause of § 2255(e) applies to his claim." *Smith v. Warden, FCC Coleman-Low*, 503 F. App'x 763, 765 (11th Cir. 2013) (citation omitted).

Reed has thus put the cart before the horse, arguing that this is acceptable. He is mistaken in doing so. He shall have a further period of time, **through September 22, 2015**, in which to demonstrate that he may appropriately invoke the savings clause of 28 U.S.C. § 2255(e) in this case. He shall also have **through September 22, 2015** in which to explain how his claim of actual innocence differs from his challenge to the sufficiency of the evidence in his direct appeal, and if it does not differ from his challenge to the sufficiency of the evidence it can be relitigated here.

IT IS SO ORDERED.

Date: 09/02/2015

  
Hon. Jane Magnus-Stinson, Judge  
United States District Court  
Southern District of Indiana

Distribution:

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